

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of :

Petition of Stratos Government Services, Inc.
For Clarification or Declaratory Ruling

)
)
) WC Docket No. 06-122
)
)

REPLY COMMENTS OF STRATOS GOVERNMENT SERVICES

Stratos Government Services, Inc. ("Stratos") submits these Reply Comments in support of its Petition for Declaratory Ruling asking the Commission to confirm that the Universal Service Fund ("USF") contribution exemption for entities that provide services exclusively to government end-users applies to both prime contractors and subcontractors.¹

All but one of the commenters strongly support the Stratos Petition.² These commenters agree that taxpayers, government agencies and the subcontractors who provide them with telecommunications services on an exclusive basis would benefit from a Commission declaratory ruling that the exemption covers such subcontractors. For example, Globecom explained that the exemption's vital public interest benefit exemption was to "minimiz[e] the costs of high-quality telecommunications services to

¹ As in the Petition, Stratos will include public safety end-users in the term "government end-users."

² See Comments of ARTEL, Inc., filed October 30, 2009 ("ARTEL Comments") at 1; Comments of CapRock Government Solutions, Inc., filed October 30, 2009 ("CapRock Comments") at 1; Comments of Globecom Systems, Inc., filed October 30, 2009 ("Globecom Comments") at 1; Comments of Northrop Grumman Corporation, filed October 30, 2009 ("Northrop Grumman Comments") at 1.

the government and public safety organizations.”³ The commenters agree that subcontractors are essential to allow for “high quality niche services to be delivered by highly specialized providers while keeping costs lower through competitive bidding.”⁴ Northrop Grumman made it clear that clarifying that the exemption applies to subcontractors as well as prime contractors is necessary to promote competition and to avoid “a distortion in the federal marketplace for commercial satellite communications services; result[ing] in less than optimal service configurations and packages; and ultimately lead[ing] to higher costs to taxpayers.”⁵

Verizon is the only party that voiced a concern with the Stratos Petition.⁶ Verizon makes five principal arguments. First, Verizon’s fundamental problem is with the exemption itself, contending that “the rationale for the exemption is debatable.”⁷ For this reason, Verizon is concerned that clarifying the scope of the exemption would lead to the loss of assessable revenue from the universal service contribution base.⁸ However, the exemption has been the unquestioned Commission policy for a dozen years. As ARTEL explains, “[t]he government services exemption reflects the Commission’s goal of minimizing the costs of interstate telecommunications borne by governments and first responders.”⁹ Verizon’s attempt to increase the government’s

³ Globecom Comments at 2 (*citing Federal-State Joint Board on Universal Service*, 12 FCC Rcd. 8776 (1997) (“*First Universal Service Report & Order*”).

⁴ Globecom Comments at 3. See also Artel Comments at 2-3; CapRock Comments at 4; Northrop Grumman Comments at 3.

⁵ Northrop Grumman Comments at 3.

⁶ Opposition of Verizon and Verizon Wireless, filed October 30, 2009 (“Verizon Comments”).

⁷ Verizon Comments at 2-3.

⁸ Verizon Comments at 4.

⁹ ARTEL Comments at 2.

cost of telecommunications services might serve Verizon's interests, but certainly does not advance the public interest.

Second, Verizon contends that the scope of the exemption is "unambiguous."¹⁰ Verizon is the only commenter who believes the exemption is clear. CapRock urged the Commission to confirm that the exemption applies to subcontractors serving government end-users exclusively because "the specific exemption language is not sufficiently clear so as to permit reasonable reliance by government service providers."¹¹ Similarly, Northrop Grumman explained "[w]hat is not clear is whether the exemption is available when government or public safety end users are served in the same manner through a subcontractor or intermediary."¹²

Third, Verizon asserts that the purpose of the exemption is to ensure that government agencies are not "arbitrarily penalized" if they purchase telecommunications services instead of self-procuring them.¹³ By the same token, there is no logical basis for Verizon's assertion that the same government agencies should be "arbitrarily penalized" if the telecommunications services are provided by a subcontractor instead of a prime contractor.

Fourth, Verizon contends that the Commission's important principle of "competitive neutrality" in administering the universal service program would be violated if the exemption covered subcontractors who sold exclusively to government end-users because they would have an advantage over companies that sold to both government and commercial end-users.¹⁴ To the contrary, the requested declaratory ruling would

¹⁰ Verizon Comments at 2.

¹¹ CapRock Comments at 2.

¹² Northrop Grumman Comments at 2. See also Artel Comments at 2; Globecom Comments at 1.

¹³ Verizon Comments at 2.

¹⁴ Verizon Comments at 3.

promote “competitive neutrality” in three important respects by “reduc[ing] the possibility that carriers with universal service obligations will compete directly with carriers without such obligations.” *First Universal Service Report and Order* ¶ 795.

- **Subcontractors competing with prime contractors** - CapRock explained that, “government subcontractors such as [CapRock] are disadvantaged” in competing with prime contractors who are clearly entitled to the exemption.¹⁵
- **Prime contractors relying on subcontractors competing with vertically integrated prime contractors** - Similarly, Northrop Grumman, a leading prime contractor which competes for government contracts against other prime contractors by integrating the telecommunications services of specialized subcontractors, explained that “it is important for [Northrop Grumman] and its government customers to have assurance that integrator teams – formed to provide an optimized configuration of expertise and capabilities to meet Federal Government requirements – will not be penalized by being subjected to USF burdens that can be avoided by the teams’ competitors.”¹⁶
- **Subcontractors who do not rely on the exemption in the absence of clarity competing with subcontractors who assume they are exempted** - Globecomm highlighted a third competitive distortion: “government contractors that read the government services exemption loosely have an unfair competitive advantage over those companies, such as [Globecomm], that take a more conservative approach to compliance. The Commission should expeditiously correct this marketplace imbalance.”¹⁷

¹⁵ Globecomm Comments at 2. Of course, many of the subcontractors trying to compete with prime contractors are small businesses. These small businesses may effectively be locked out of competing for government business if they are not entitled to the same exemption as prime contractors serving exclusively government end-users. In turn, the government’s mandate to contract with small businesses would be severely hampered, which would not be in the public interest. 47 U.S.C. §257.

¹⁶ Northrop Grumman Comments at 3.

¹⁷ Globecomm Comments at 4; see also CapRock Comments at 4.

If Verizon is concerned that it could be at a competitive disadvantage with CapRock and Globecom, then it too can form a subsidiary devoted exclusively to serving government end-users.¹⁸

Fifth, Verizon's last ditch argument is a claim that it would not be "practical" for subcontractors to be covered by the exemption because they would need to ensure that the prime contractor "also limits its sales – in every instance – to government entities."¹⁹ Verizon's concern is misplaced. The subcontractor will have a strong financial incentive to be sure that the prime contractor resells the telecommunications services exclusively to the government because the retroactive cost of losing the exemption after it is too late to pass the universal service obligation through would be substantial. To manage this risk, subcontractors would contractually require the prime contractor to resell the telecommunications services only to government entities. Many subcontracts for governmental telecommunications services already provide that the services will be resold to governmental end-users and even identify the specific prime contract. The prime contractor would similarly comply with its contractual obligation because the damages for failing to do so would be extensive. Indeed, the Commission could require any subcontractor claiming the exemption to have such a clause in its contract with the prime contractor. A requirement that the subcontractor contractually limit resale to

¹⁸ Verizon's concern that forming a new subsidiary is not the sort of "business decisions" that the Commission's universal service policy should encourage is misplaced. Verizon Comments at 3, *citing First Universal Service Report and Order* ¶ 795. The Commission made it clear in the very paragraph of the *First Universal Service Report and Order* cited by Verizon that the driving factor in requiring contributions from private service providers and payphone aggregators was that it wanted to avoid having companies with contribution obligations competing with other companies that did not have contribution obligations.

¹⁹ Verizon Comments at 4-5.

government end-users would ensure compliance much more smoothly than another universal service certification program, as Verizon suggests.²⁰

To conclude, the Commission should confirm that the exemption applies to subcontractors, reducing costs to government agencies and taxpayers, increasing government access to specialized telecommunications services and leveling the playing field for subcontractors and prime contractors alike. As Artel explains, “[r]estricting the government services exemption to prime contractors will increase costs of services to government entities while decreasing available service options, disadvantaging the public interest.”²¹

Respectfully Submitted,

Robert J. Roe
President
Stratos Government Services, Inc.
1400 Eye Street, N.W., Suite 200
Washington, D.C. 20005

/s/

Alfred M. Mamlet
Steptoe & Johnson LLP
1330 Connecticut Ave., N.W.
Washington, D.C. 20036

November 12, 2009

²⁰ Verizon Comments at 4-5. Since the restriction on resale would be to qualify for the exemption, it would not be an “unreasonable” restriction under Section 251(b)(1).

²¹ Artel Comments at 3.

CERTIFICATE OF SERVICE

I, Joan Casey, hereby certify that a true copy of the foregoing Reply Comments of Stratos Government Services, Inc. was sent by U.S. Mail, this 12th day of November, 2009, to the following:

Stephen D. Baruch
Lerman Senter PLLC
2000 K Street, N.W., Suite 600
Washington, D.C. 20006

Milton M. Brown III
Artel, Inc.
1893 Preston White Drive
Reston, VA 20191

C. Douglas Jarrett
Gregory E. Kunkle
Keller and Heckman LLP
1001 G Street, N.W., Suite 500 West
Washington, D.C. 20001

Michelle A. McClure
Davina S. Sashkin
Fletcher, Heald & Hildreth, P.L.C.
1300 North 17th Street, 11th Floor
Arlington, VA 22209

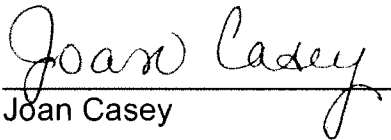
Karen Zacharia
Christopher M. Miller
Verizon
1320 North Courthouse Road, 9th Floor
Arlington, VA 22201-2909

John T. Scott III
Tamara L. Preiss
Verizon Wireless
1300 I Street, N.W., Suite 400 West
Washington, D.C. 20005

Erica Myers*
Telecommunications Access Policy Division
Wireline Competition Bureau
445 12th Street, S.W., Room 5-B432
Washington, D.C. 20554

Antoinette Stevens*
Telecommunications Access Policy Division
Wireline Competition Bureau
445 12th Street, S.W., Room 5-B521
Washington, D.C. 20554

Best Copy and Printing, Inc.*
445 12th Street, S.W., Room CY-B402
Washington, D.C. 20554


Joan Casey

*By E-mail